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and which allow them to attend the approved program of study. Those qualified applicants whose attendance at a program of study at an institution of higher education is not contingent on the award of benefits under this part, may receive a reduced amount of benefits in the event that funds appropriated under this program are not sufficient to award all qualified applicants the total amount of benefits to which they are otherwise entitled.

[62 FR 37716, July 15, 1997, as amended at 64 FR 49954, Sept. 14, 1999]

§ 32.38 Denial of benefits.

(a) No benefit shall be paid under this subpart if the Bureau determines that the dependent is not eligible for, is no longer eligible for, or is not entitled to the assistance for which application is made. Without limitation, this will include circumstances in which—

(1) The benefits would exceed the applicable durational limits;

(2) A dependent child has exceeded the age limit for benefits;

(3) The dependent has failed to maintain satisfactory progress in the selected program of education as defined in § 32.32(i);

(4) The dependent is in default on any student loan obtained through Title IV of the Higher Education Act of 1965, unless the assistance under this subpart is used for repayment of the defaulted loans and the applicant provides evidence of this fact to the Bureau in the form of an approved repayment plan; or

(5) The dependent is subject to a denial of federal benefits under 21 U.S.C. 862.

(b) The Bureau shall deny benefits under this subpart if—

(1) The educational institution attended by the dependent fails to meet a requirement for eligibility described in § 32.32(h);

(2) The dependent's enrollment in or pursuit of the selected program of education would fail to meet the criteria established in § 32.32(g); or

(3) The dependent already is qualified by previous education or training for the educational, professional or vocational objective for which the program of education is offered.

§ 32.39 Appeals.

An applicant may, within 30 days after notification of denial, submit a written appeal request to the Bureau. Appeals will be handled consistent with § 32.24 and the appendix to this part, except that such appeals shall not be handled by oral hearing but will be conducted through a record review by an administrative hearing officer. Provisions in § 32.24 and the appendix to this part relating to oral hearings shall not be applicable to appeals under this subpart.

§ 32.40 Repayment.

In the event that the recipient of financial assistance under this subpart fails to maintain satisfactory progress, as defined in § 32.32(i), or otherwise become ineligible for assistance (other than as a result of age or the expiration of the time limit for assistance), the dependent is liable for repayment of funds awarded for prospective assistance. The Director of the Bureau may waive all or part of such repayment, based on a consideration of the circumstances and the hardship that would result from such repayment.

APPENDIX TO PART 32—PSOB HEARING AND APPEAL PROCEDURES

a. Notification to Claimant of Denial

These appeal procedures apply to a claimant's¹ request for reconsideration of a denial made by the Public Safety Officers' Benefits (PSOB) Office. The denial letter will advise the claimant of the findings of fact and conclusions of law supporting the PSOB Office's determination, and of the appeal procedures available under § 32.24 of the PSOB regulations. A copy of every document in the case file that (1) contributed to the determination, and (2) was not provided by the claimant shall also be attached to the denial letter, except where disclosure of the material would result in a clearly unwarranted invasion of a third party's privacy. The attached material might typically include medical opinions offered by the Armed Forces Institute of Pathology or other medical experts, legal memoranda from the Office of General Counsel of the Office of Justice Programs, or

¹As used in this procedure, the word, "claimant" means a claimant for benefits or, where appropriate, the claimant's designated representative.

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memoranda to the file prepared by PSOB Office staff. A copy of the PSOB regulations (28 CFR part 32) shall also be enclosed.

b. Receipt of Appeal

1. When an appeal has been received, the PSOB Office will assign the case and will transmit the complete case file to a hearing officer. Assignments will be made in turn, from a standing roster, except in those cases where a case is particularly suitable to a specific hearing officer's experience.

2. The PSOB Office will inform the claimant of the name of the hearing officer, request submission of all evidence to the hearing officer, and send a copy of this appeals procedure. If an oral hearing is requested, the PSOB Office will be responsible for scheduling the hearing and making the required travel arrangements.

3. The PSOB Office will be responsible for providing all administrative support to the hearing officer. An attorney from the Office of General Counsel (OGC) who has not participated in the consideration of the claim will provide legal advice to the hearing officer. The hearing officer is encouraged to solicit the advice of the assigned OGC attorney on all questions of law.

4. Prior to the hearing, the hearing officer shall request the claimant to provide a list of expected witnesses and a brief summary of their anticipated testimony.

c. Designation of Hearing Officers

A. In an internal instruction the BJA Director designated a roster of hearing officers to hear PSOB appeals.

1. The hearing officers are specifically delegated the Director's authority to:

- (i) Issue subpoenas;
- (ii) Administer oaths;
- (iii) Examine witnesses; and
- (iv) Receive evidence at any place in the United States the officer may designate.

d. Conduct of the Oral Hearing

A. If requested, an oral hearing shall be conducted before the hearing officer in any location agreeable to the officer and the claimant.

1. The hearing officer shall call the hearing to order and advise the claimant of (1) the findings of fact and conclusions of law supporting the initial determination; (2) the nature of the hearing officer's authority; and (3) the manner in which the hearing will be conducted and a determination reached.

2. In conducting the hearing, the hearing officer shall not be bound by common law or statutory rules of evidence, by technical or formal rules or procedures, or by Chapter 5 of the Administrative Procedure Act, but must conduct the hearing in such a manner as best to ascertain the rights of the claimant.

3. The hearing officer shall receive such relevant evidence as may be introduced by the claimant and shall, in addition, receive such other evidence as the hearing officer may determine to be necessary or useful in evaluating the claim.

4. Evidence may be presented orally or in the form of written statements and exhibits. All witnesses shall be sworn by oath or affirmation.

5. If the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing may be adjourned and, at any time prior to the mailing of notice of the decision, reopened for the receipt of such evidence. The officer should, in any event, seek to conclude the hearing within 30 days from the first day of the hearing.

6. All hearings shall be attended by the claimant, his or her representative, and such other persons as the hearing officer deems necessary and proper. The wishes of the claimant should always be solicited before any other persons are admitted to the hearing.

7. The hearing shall be recorded, and the original of the complete transcript shall be made a part of the claims record.

8. The hearing will be deemed closed on the day the hearing officer receives the last piece of evidence relevant to the proceeding.

9. If the claimant waives the oral hearing, the hearing officer shall receive all relevant written evidence the claimant wishes to submit. The hearing officer may ask the claimant to clarify or explain the evidence submitted, when appropriate. The hearing officer should seek to close the record no later than 60 days after the claimant's request for reconsideration.

e. Determination

1. A copy of the transcript shall be provided to the hearing officer, to the claimant, to the PSOB Office, and to the OGC after the conclusion of the hearing.

2. The hearing officer shall make his, or her, determination no later than the 30th day after the last evidence has been received. Copies of the determination shall be made available to the PSOB Office and the OGC for their review.

3. If either the PSOB Office or the OGC disagrees with the hearing officer's final determination, that office may request the BJA Director to review the record. If the BJA Director agrees to review the record, he or she will send the hearing officer's determination, all comments received from the PSOB Office, the OGC, or other sources (except where disclosure of the material would result in an unwarranted invasion of privacy), and notice of his or her intent to review the record to the claimant. The BJA Director will also advise the claimant of his or her opportunity

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to offer comments, new evidence, and argument within 30 days after the receipt of notification. The BJA Director shall seek to advise all parties of the final agency decision within 30 days after the expiration of the comment period.

4. If the PSOB Office and the OGC agree with the hearing officer's determination or the BJA Director declines to review the record, the hearing officer's determination will be the final agency decision and will be sent to the claimant by the PSOB Office immediately.

5. If the hearing officer's determination is a denial, all material that (1) contributed to the determination and (2) was not provided by the claimant shall be attached to the denial letter, except where disclosure of the material would result in a clearly unwarranted invasion of a third party's privacy. The claimant will be given an opportunity to request the BJA Director to review the record and the hearing officer's decision, and to offer comments, new evidence, or argument within 30 days. The BJA Director shall advise all parties of the final agency decision within 30 days after the expiration of the comment period.

6. The PSOB Office will provide administrative support to the hearing officer and the BJA Director throughout the appeal process.

PART 33—BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS

Subpart A—Criminal Justice Block Grants

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AUTHORITY: 42 U.S.C. 3701 through 3797y-4; 5 U.S.C. 301.

SOURCE: 50 FR 22990, May 30, 1985, unless otherwise noted.

Subpart A—Criminal Justice Block Grants

GENERAL PROVISIONS

§ 33.1 General.

This subpart defines eligibility criteria and sets forth requirements for application for and administration of block grants by state and local governments.

[50 FR 22990, May 30, 1985, as amended at 63 FR 50761, Sept. 23, 1998]

§ 33.2 Statutory authority.

The statutory authority for the regulations is the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et. seq.*, as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, Pub. L. 94-503, Pub. L. 95-115, Pub. L. 96-157, and Pub. L. 98-473) (hereinafter referred to as the Justice Assistance Act of 1984 or the Act).